

Senate Bill 541

By: Senators Chance of the 16th, Staton of the 18th, Rogers of the 21st and Shafer of the 48th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions, so as to provide for guaranteed asset protection waivers; to provide for legislative intent; to provide for scope; to provide for purposes; to provide for definitions; to provide for requirements for offering; to provide for contractual liability or other insurance policies; to provide for disclosures; to provide for cancellation; to provide for exempted commercial transactions; to provide for; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by adding a new article to read as follows:

"ARTICLE 14

7-1-1050.

The General Assembly finds that guaranteed asset protection waivers are not insurance. All guaranteed asset protection waivers issued after the date of enactment of this article shall not be construed as insurance.

7-1-1051.

(a) The purpose of this article is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(b) This article shall not apply to:

- (1) An insurance policy offered by an insurer under the insurance laws of this state; or
- (2) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. Part 37 or 12 C.F.R. Part 721 or other federal law.

S. B. 541

(c) Guaranteed asset protection waivers governed under this article are not insurance and are exempt from the insurance laws of this state. Persons marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers that comply with this article are exempt from this state's insurance licensing requirements.

7-1-1052.

The following terms are defined for purposes of this article and are not intended to provide actual terms required in guaranteed asset protection waivers:

(1) 'Administrator' means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(2) 'Borrower' means a debtor, retail buyer, or lessee under a finance agreement.

(3) 'Creditor' means:

(A) The lender in a loan or credit transaction;

(B) The lessor in a lease transaction;

(C) Any retail installment seller that provides credit to any retail buyer of motor vehicles, provided that such entity complies with the provisions of this article;

(D) The seller in commercial retail installment transactions; or

(E) The assignees of any of the creditors listed in subparagraphs (A) through (D) of this paragraph to whom the credit obligation is payable.

(4) 'Finance agreement' means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

(5) 'Free look period' means the period of time from the effective date of the GAP waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time must not be shorter than 30 days.

(6) 'Guaranteed asset protection waiver' means a contractual agreement wherein a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.

(7) 'Insurer' means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(8) 'Motor vehicle' means self-propelled or towed vehicles designed for personal or commercial use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers.

(9) 'Person' includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

(10) 'Retail buyer' shall have the same meaning as provided in Code Section 10-1-31.

(11) 'Retail installment seller' shall have the same meaning as provided in Code Section 10-1-31.

7-1-1053.

(a) Guaranteed asset protection waivers may be offered, sold, or provided to borrowers in this state in compliance with this article.

(b) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(c) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and its implementing regulations, as they may be amended from time to time, must be separately stated and is not to be considered a finance charge or interest.

(d) A retail installment seller must insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor other than a retail installment seller may insure its guaranteed asset protection waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor or retail installment seller or may be procured by an administrator to cover a creditor's or retail installment seller's obligations. However, retail installment sellers that are lessors on motor vehicles are not required to insure obligations related to guaranteed asset protection waivers on such leased vehicles.

(e) The guaranteed asset protection waiver shall remain a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor.

(f) Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(g) Any creditor that offers a guaranteed asset protection waiver must report the sale of, and forward funds received on, all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy or other specified program documents.

(h) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator pursuant to the terms of a written agreement must be held by such creditor or administrator in a fiduciary capacity.

1 7-1-1054.

2 (a) Contractual liability or other insurance policies insuring guaranteed asset protection
3 waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums
4 the creditor is legally obligated to waive under the guaranteed asset protection waivers
5 issued by the creditor and purchased or held by the borrower.

6 (b) Coverage under a contractual liability or other insurance policy insuring a guaranteed
7 asset protection waiver must also cover any subsequent assignee upon the assignment, sale,
8 or transfer of the finance agreement.

9 (c) Coverage under a contractual liability or other insurance policy insuring a guaranteed
10 asset protection waiver must remain in effect unless cancelled or terminated in compliance
11 with the applicable insurance laws of this state.

12 (d) The cancellation or termination of a contractual liability or other insurance policy must
13 not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the
14 creditor prior to the date of cancellation or termination and for which premium has been
15 received by the insurer.

16 7-1-1055.

17 Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear,
18 understandable language that is easy to read, the following:

19 (1) The name and address of the initial creditor and the borrower at the time of sale and
20 the identity of any administrator if different from the creditor;

21 (2) The purchase price and the terms of the guaranteed asset protection waiver, including
22 without limitation the requirements for protection, conditions, or exclusions associated
23 with the guaranteed asset protection waiver;

24 (3) That the borrower may cancel the guaranteed asset protection waiver within a free
25 look period, as specified in the waiver, and will be entitled to a full refund of the purchase
26 price, provided no benefits have been made; or in the event benefits have been made, the
27 borrower may receive a full or partial refund if the waiver so provides;

28 (4) The procedure the borrower must follow, if any, to obtain guaranteed asset protection
29 waiver benefits under the terms and conditions of the waiver, including a telephone
30 number and address where the borrower may apply for waiver benefits;

31 (5) Whether or not the guaranteed asset protection waiver is cancelable after the free
32 look period and the conditions under which it may be canceled or terminated, including
33 the procedures for requesting any refund due;

34 (6) That in order to receive any refund due in the event of a borrower's cancellation of
35 the guaranteed asset protection waiver agreement or early termination of the finance
36 agreement after the free look period of the guaranteed asset protection waiver, the

borrower, in accordance with terms of the waiver, must provide a written request to cancel to the creditor, administrator, or such other party within 90 days after the borrower's decision to cancel the waiver or the occurrence of the event terminating the finance agreement;

(7) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement; and

(8) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver.

7-1-1055.

(a) Guaranteed asset protection waiver agreements may be cancelable or noncancelable after the free look period. Guaranteed asset protection waivers must provide that if a borrower cancels a waiver within the free look period, the borrower will be entitled to a full refund of the purchase price, provided no benefits have been paid; or in the event benefits have been paid, the borrower may receive a full or partial refund if the waiver so provides.

(b) In the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator, or other party within 90 days after the borrower's decision to cancel the waiver or the occurrence of the event terminating the finance agreement.

(c) If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection (d) of this Code section.

(d) Any cancellation refund under subsection (a), (b), or (c) of this Code section may be applied by the creditor as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance agreement has been paid in full.

1 7-1-1056.

2 Subsection (c) of Code Section 7-1-1053 and Code Sections 7-1-1055 and 7-1-1057 shall
3 not be applicable to a guaranteed asset protection waiver offered in connection with a lease
4 or retail installment sale associated with a commercial transaction.

5 7-1-1057.

6 The commissioner may take action which is necessary or appropriate to enforce the
7 provisions of this article and to protect guaranteed asset protection waiver holders in this
8 state. After proper notice and opportunity for hearing, the commissioner may:

9 (1) Order the creditor, administrator, or any other person not in compliance with this
10 article to cease and desist from further guaranteed asset protection waiver related
11 operations which are in violation of this article; and

12 (2) Impose a penalty of not more than \$500.00 per violation and not more than
13 \$10,000.00 in the aggregate for all violations of similar nature. For purposes of this
14 paragraph, violations must be of a similar nature if the violation consists of the same or
15 similar course of conduct, action, or practice, irrespective of the number of times the
16 conduct, action, or practice which is determined to be a violation of this article occurred."

17 **SECTION 2.**

18 This Act shall become effective on July 1, 2008, and apply to all guaranteed asset protection
19 waivers which shall become effective on or after January 1, 2009.

20 **SECTION 3.**

21 All laws and parts of laws in conflict with this Act are repealed.